IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.15030 of 2006

Dated: September 29, 2006

Between:

S. Narayana Naik, S/o. Umla Naik, aged 37 years,
Occ: Deputy Executive Engineer, HNSS Sub Division
No.1 Guntakal, Anantapur District.

... Petitioner

And

The Tungabhadra Board, rep. by its Secretary,
Tungabhadra Dam, Hospet, Bellary Tq,
Karnataka State and two others.

... Respondents

Order:

The petitioner, who is working as Deputy Executive Engineer in HNSS Subdivision No.1, Anantapur District, has filed this Writ Petition questioning the orders of the first respondent dated 17-07-2006 issued in Letter No.32/CC/95.

2. The second respondent-Government has issued orders in G.O.Rt.No.983, Irrigation & C.A.D. (SER.I) Department dated 07-07-2006, transferring the services of the petitioner and one more officer and posted them in Tungabhadra Board against A.P. quota on deputation basis. When the said orders were communicated to the first respondent, the Secretary of the Tungabadra Board, the Secretary addressed to the Government of Andhra Pradesh stating that the petitioner was earlier posted as Section Officer in the Board on deputation from June, 2002 to July, 2005; as such, he has not completed the cooling period required for posting him, for the second time as per the Transfer Policy approved by the Board in their 181st meeting held on 21-06-2005.

3. The Tungabhadra Board was constituted by the Government of India vide Notification No.DW VI (4) (9) dated 10-03-1955. It has formulated its Transfer Policy for Field Technical Officers of the Irrigation Wing of the Board. As per the said policy, the Board exercises powers of the State Government. It makes its own rules for conduct of business. The staff and officers working in Tungabhadra Board are posted by the participating states, i.e. Andhra Pradesh and Karnataka in the agreed ratio, except the Secretary and Assistant Secretary, who are drawn on deputation from the Government of India for specific period. The services of the staff and officers working in the Board are governed by the Service Rules applicable to them in their respective parent departments, but, during the tenure of any employee in the Board, they remain under the administrative control of the Board and are bound by the rules and regulations of the Board.

4. As per the Transfer Policy, the tenure of Superintending Engineer and Executive Engineers in the Board shall be for a period of three years, and the tenure of Sub-Divisional Officers and Section Officers shall be for a period of five years. Clauses 2.5, 2.6 and 4, of the Transfer Policy read as follows:

> "2.5 The tenure of Superintending Engineer and Executive Engineers in Board shall be for a period of 3 years. The tenure of Sub-Divisional Officers and Section Officers in the Board shall be for a period of 5 years.
>
> 2.6 In case of Sub-Divisional Officers and Section Officers after completion of period of 3 years, Secretary would review the performance of the official and recommend to the board extension of tenure of the official on year to year basis. Based on the recommendation of Secretary for retention or otherwise in Board beyond 3 years/4 years, Chairman shall decide extension of a Sub-Divisional Officer/Section Officer for the 4^{th} and 5^{th} year, subject to ratification by Board.
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> 4. <u>Reposting to Board</u>
>
> 4.1 Normally official posted once to Board and repatriated after completion of tenure are not accepted in Board for a second tenure. However, officials, whose services have been found satisfactory during the first tenure, shall be considered for a second term after completion of a cooling period of 3 years.

5. As per the policy referred above, normally, an officer posted once to the Board and repatriated after completion of tenure is not accepted in the Board for second tenure. However, officials whose services have been found satisfactory during the first tenure shall be considered for a second tenure after completion of cooling period of 3 years.

6. In this case, it is not in dispute that while the petitioner was working as Assistant Executive Engineer in Government service,

he was sent on deputation to Tungabhadra Board and he worked there on deputation as Section Officer from June, 2002 to July, 2005. However, when he was promoted to the post of Deputy Executive Engineer, he was repatriated to Government service. The impugned letter addressed by the Secretary, Tungabhadra Board, the first respondent herein, is questioned in this Writ Petition mainly on the ground that the tenure of Sub-divisional Officers and Section Officers in the Board is for a period of five years; as the petitioner did not complete five years of service in the Board, as such, there cannot be any objection for his posting in the Board on deputation.

7. Heard Mr. V. Srinivas, learned counsel for the petitioner, Mr. Shyam Sunder for Respondent No.1, learned Government Pleader for Irrigation for Respondent Nos.2 and 3 and Mr. T. Suryakaran Reddy for the impleaded respondent.

8. Learned counsel for the petitioner would submit that as much as the petitioner did not complete the tenure of five years, the clause which contemplates cooling period of three years for further posting cannot come in the way of the petitioner being posted on deputation in the Board.

9. The Government has filed Counter affidavit and additional counter affidavit. Along with the additional counter affidavit, a copy of the orders dated 07-06-2002 issued by the Secretary, Tungabhadra Board, in Memorandum No.236/CC/94, has been filed, after the petitioner was sent on deputation pursuant the orders dated

05-06-2002 issued by the Engineer-in-Chief, Irrigation and Command Area Development. The order dated 07-06-2002 reads as follows:

> " Sri S. Narayan Naik, Assistant Executive Engineer, working in Irrigation Circle, Kurnool who has been transferred and posted to Tungabhadra Board in the reference cited is reposted to Services Section, Estate and HW Sub-Division, TB Dam against existing vacany.
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> His tenure in the Board will be for a period of 3 years from the date of his joining in the Board subject to the following conditions.
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> 1) The tenure of the officer can be terminated by the Board at any time.
> 2) The parent department can withdraw the services of the officer from the Board at any time."

10. Though the tenure of Sub-Divisional Officers and Section Officers in the Board is mentioned as upto five years, but, as per Clause 2.6 of the Transfer Policy, continuance beyond three years is not automatic. In case of Sub-Divisional Officers and Section Officers, after completion of a period of three years, Secretary would review the performance of the officer concerned and recommend to the Board for extension of his/her tenure on year to year basis. Basing on the recommendations of the Secretary for retention or otherwise, the Chairman is empowered to decide the issue of extension beyond three years, for the 4th and 5th year. Further, under Clause 2.4 of the Transfer policy, the right of acceptance or otherwise of a candidate posted to the Board rests with the Board. A composite reading of various clauses under 2.4, 2.5. 2.6 and 4.1, would make it clear that though the maximum period of tenure for a Sub-Divisional Officer is for a period of five

years, but, at first instance, such officer would be posted only for a tenure of three years. Continuance for fourth and fifth year is not automatic, but subject to recommendations by the Secretary for retention or otherwise of such officer in the service of the Board. Further, when the petitioner was posted in the year 2002, while giving posting orders in the Tungabhadra board, it has clearly been mentioned in the order dated 07-06-2002 that the tenure of the petitioner in the Board was three years. In that view of the matter, it is not open for the petitioner to plead that as he did not complete five years of service, the cooling period contemplated in Clause 4.1 has no application for his being posted for the second time in the Board, pursuant to the orders of the Government. In any event, the petitioner who is a Deputy Executive Engineer in the State Government will not have any right to claim posting on deputation in the Board. It is for the Government and the Board concerned to consider as to avail the services of the petitioner on deputation in the Board, basing on the clauses of the Transfer Policy issued by the Board.

11. For the foregoing reasons, I do not find any illegality in the impugned letter.

12. The Writ Petition is devoid of merits and is accordingly dismissed, without any order as to costs.

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JUSTICE R. SUBHASH REDDY.

September 29, 2006
MRR